

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**MASON TENDERS DISTRICT COUNCIL WELFARE  
FUND, PENSION FUND, ANNUITY FUND, and  
TRAINING PROGRAM FUND, and JOHN J. VIRGA,  
in his fiduciary capacity as Director,**

**07CV 6600 (WHP)**

**Plaintiffs,  
-against-**

**ANSWER AND DEMAND  
FOR JURY TRIAL**

**YORK HUNTER, INC., YORK HUNTER  
MANAGEMENT LLC, KENNETH CALAO d/b/a  
YORK HUNTER MANAGEMENT LLC, and  
KENNETH CALAO,**

**Defendants.**

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Defendants York Hunter, Inc., York Hunter Management LLC, Kenneth Colao s/h/a Kenneth Calao d/b/a York Hunter Management LLC, and Kenneth Colao s/h/a Kenneth Calao (collectively "York Hunter"), by and through their attorneys, Bauman Katz and Grill LLP, as and for their Answer in response to the Complaint of Plaintiffs Mason Tenders District Council Welfare Fund, Pension Fund, Annuity Fund, and Training Program Fund, and John J. Virga, in his fiduciary capacity as Director (collectively "Plaintiffs"), hereby allege, upon information and belief, as follows:

**ANSWER AS TO THE NATURE OF THE ACTION AND JURISDICTION**

1. Neither deny nor admit the allegations contained in paragraph "1" of the Complaint and respectfully refer all questions of law to the Court. Deny the allegations contained in paragraph "1" that refer to York Hunter.
  
2. Neither deny nor admit the allegations contained in paragraph "2" of the Complaint and respectfully refer all questions of law to the Court.

3. Neither deny nor admit the allegations contained in paragraph "3" of the Complaint and respectfully refer all questions of law to the Court.

**ANSWER AS TO PARTIES**

4. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "4" of the Complaint and respectfully refer all questions of law to the Court.

5. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "5" of the Complaint and respectfully refer all questions of law to the Court.

6. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "6" of the Complaint and respectfully refer all questions of law to the Court.

7. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "7" of the Complaint and respectfully refer all questions of law to the Court.

8. Deny the allegations contained in paragraph "8" of the Complaint and respectfully refer all questions of law to the Court, and to the Agreement(s) for its terms, meaning and effect.

9. Deny the allegations contained in paragraph "9" of the Complaint and respectfully refer all questions of law to the Court, and to the Agreement(s) for its terms, meaning and effect.

10. Deny the allegations contained in paragraph "10" of the Complaint and respectfully refer all questions of law to the Court, and to the Agreement(s) for its terms, meaning and effect.

11. Deny the allegations contained in paragraph "11" of the Complaint.

12. Deny the allegations contained in paragraph "12" of the Complaint and respectfully refer the Court to the Agreement for its terms, meaning and effect.

13. Deny the allegations contained in paragraph "13" of the Complaint and respectfully refer the Court to the Agreement for its terms, meaning and effect.

**ANSWERING THE FIRST CLAIM FOR RELIEF**

14. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "13" of the Complaint.

15. Deny the allegations contained in paragraph "15" of the Complaint and respectfully refer the Court to the Agreement for its terms, meaning and effect.

16. Deny the allegations contained in paragraph "16" of the Complaint.

17. Deny the allegations contained in paragraph "17" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

18. Deny the allegations contained in paragraph "18" of the Complaint.

**ANSWERING THE SECOND CLAIM FOR RELIEF**

19. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "18" of the Complaint.

20. Deny the allegations contained in paragraph "20" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

21. Deny the allegations contained in paragraph "21" of the Complaint.

22. Deny the allegations contained in paragraph "22" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

23. Deny the allegations contained in paragraph "23" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

**ANSWERING THE THIRD CLAIM FOR RELIEF**

24. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "23" of the Complaint.

25. Deny the allegations contained in paragraph "25" of the Complaint and respectfully refer the Court to the Agreement for its terms, meaning and effect.

26. Deny the allegations contained in paragraph "26" of the Complaint and respectfully refer the Court to the Agreement for its terms, meaning and effect.

27. Deny the allegations contained in paragraph "27" of the Complaint.

28. Deny the allegations contained in paragraph "28" of the Complaint.

**ANSWERING THE FOURTH CLAIM FOR RELIEF**

29. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "28" of the Complaint.

30. Deny the allegations contained in paragraph "30" of the Complaint and respectfully refer the Court to the Agreement for its terms, meaning and effect.

31. Deny the allegations contained in paragraph "31" of the Complaint.

32. Deny the allegations contained in paragraph "32" of the Complaint and respectfully refer the Court to the Agreement for its terms, meaning and effect.

33. Deny the allegations contained in paragraph "33" of the Complaint.

**ANSWERING THE FIFTH CLAIM FOR RELIEF**

34. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "33" of the Complaint.

35. Deny the allegations contained in paragraph "35" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

36. Deny the allegations contained in paragraph "36" of the Complaint.

37. Deny the allegations contained in paragraph "37" of the Complaint and respectfully

refer the Court to the Agreement(s) for its terms, meaning and effect.

38. Deny the allegations contained in paragraph "38" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

**ANSWERING THE SIXTH CLAIM FOR RELIEF**

39. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "38" of the Complaint.

40. Deny the allegations contained in paragraph "40" of the Complaint and respectfully refer the Court to the Agreement for its terms, meaning and effect.

41. Deny the allegations contained in paragraph "41" of the Complaint and respectfully refer the Court to the Agreement for its terms, meaning and effect.

42. Deny the allegations contained in paragraph "42" of the Complaint.

43. Deny the allegations contained in paragraph "43" of the Complaint.

**ANSWERING THE SEVENTH CLAIM FOR RELIEF**

44. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "43" of the Complaint.

45. Neither admit nor deny the allegations contained in paragraph "45" of the Complaint and respectfully refer all questions of law to the Court.

46. Deny the allegations contained in paragraph "46" of the Complaint and respectfully refer all questions of law to the Court.

47. Deny the allegations contained in paragraph "47" of the Complaint and respectfully refer all questions of law to the Court.

48. Deny the allegations contained in paragraph "48" of the Complaint and respectfully

refer all questions of law to the Court.

**ANSWERING THE EIGHTH CLAIM FOR RELIEF**

49. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "48" of the Complaint.

50. Neither admit nor deny the allegations contained in paragraph "50" of the Complaint and respectfully refer all questions of law to the Court.

51. Deny the allegations contained in paragraph "51" of the Complaint and respectfully refer all questions of law to the Court, and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

52. Neither admit nor deny the allegations contained in paragraph "52" of the Complaint and respectfully refer all questions of law to the Court.

53. Deny the allegations contained in paragraph "53" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

**ANSWERING THE NINTH CLAIM FOR RELIEF**

54. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "53" of the Complaint.

55. Neither admit nor deny the allegations contained in paragraph "55" of the Complaint and respectfully refer all questions of law to the Court.

56. Deny the allegations contained in paragraph "56" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

57. Deny the allegations contained in paragraph "57" of the Complaint and respectfully refer all questions of law to the Court.

58. Deny the allegations contained in paragraph "58" of the Complaint and respectfully refer all questions of law to the Court.

**ANSWERING THE TENTH CLAIM FOR RELIEF**

59. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "58" of the Complaint.

60. Neither admit nor deny the allegations contained in paragraph "60" of the Complaint and respectfully refer all questions of law to the Court.

61. Deny the allegations contained in paragraph "61" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

62. Deny the allegations contained in paragraph "62" of the Complaint and respectfully refer all questions of law to the Court.

63. Deny the allegations contained in paragraph "63" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

**ANSWERING THE ELEVENTH CLAIM FOR RELIEF**

64. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "63" of the Complaint.

65. Deny the allegations contained in paragraph "65" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its

terms, meaning and effect.

66. Deny the allegations contained in paragraph "66" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

67. Deny the allegations contained in paragraph "67" of the Complaint and respectfully refer all questions of law to the Court

68. Deny the allegations contained in paragraph "68" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

69. Deny the allegations contained in paragraph "69" of the Complaint and respectfully refer all questions of law to the Court

70. Deny the allegations contained in paragraph "70" of the Complaint and respectfully refer all questions of law to the Court.

71. Deny the allegations contained in paragraph "71" of the Complaint and respectfully refer all questions of law to the Court.

**ANSWERING THE TWELFTH CLAIM FOR RELIEF**

72. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "71" of the Complaint.

73. Deny the allegations contained in paragraph "73" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

74. Deny the allegations contained in paragraph "74" of the Complaint.

75. Deny the allegations contained in paragraph "75" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect, and respectfully requests that the Court deny the request contained therein in its entirety.

**ANSWERING THE THIRTEENTH CLAIM FOR RELIEF**

76. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "75" of the Complaint.

77. Deny the allegations contained in paragraph "77" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

78. Deny the allegations contained in paragraph "78" of the Complaint.

79. Deny the allegations contained in paragraph "79" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect and respectfully requests that the Court deny the request contained therein in its entirety.

**ANSWERING THE FOURTEENTH CLAIM FOR RELIEF**

80. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "79" of the Complaint.

81. Deny the allegations contained in paragraph "81" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

82. Deny the allegations contained in paragraph "82" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

83. Deny the allegations contained in paragraph "83" of the Complaint.

84. Deny the allegations contained in paragraph "84" of the Complaint.

**ANSWERING THE FIFTEENTH CLAIM FOR RELIEF**

85. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "84" of the Complaint.

86. Deny the allegations contained in paragraph "86" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

87. Deny the allegations contained in paragraph "87" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

88. Deny the allegations contained in paragraph "88" of the Complaint.

89. Deny the allegations contained in paragraph "89" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

**ANSWERING THE SIXTEENTH CLAIM FOR RELIEF**

90. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "89" of the Complaint.

91. Deny the allegations contained in paragraph "91" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

92. Deny the allegations contained in paragraph "92" of the Complaint and respectfully refer all questions of law to the Court and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

93. Deny the allegations contained in paragraph "93" of the Complaint.

94. Deny the allegations contained in paragraph "94" of the Complaint.

**ANSWERING THE SEVENTEENTH CLAIM FOR RELIEF**

95. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "94" of the Complaint.

96. Deny the allegations contained in paragraph "96" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

97. Deny the allegations contained in paragraph "97" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

98. Deny the allegations contained in paragraph "98" of the Complaint.

99. Deny the allegations contained in paragraph "99" of the Complaint.

**ANSWERING THE EIGHTEENTH CLAIM FOR RELIEF**

100. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "99" of the Complaint.

101. Deny the allegations contained in paragraph "101" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

102. Deny the allegations contained in paragraph "102" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

103. Deny the allegations contained in paragraph "103" of the Complaint.

104. Deny the allegations contained in paragraph "104" of the Complaint.

**ANSWERING THE NINETEENTH CLAIM FOR RELIEF**

105. Repeat the allegations, denials and admissions set forth in response to the allegations

contained in paragraphs "1" through "104" of the Complaint.

106. Deny the allegations contained in paragraph "106" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

107. Deny the allegations contained in paragraph "107" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

108. Deny the allegations contained in paragraph "108" of the Complaint.

109. Deny the allegations contained in paragraph "109" of the Complaint.

**ANSWERING THE TWENTIETH CLAIM FOR RELIEF**

110. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "109" of the Complaint.

111. Deny the allegations contained in paragraph "111" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

112. Deny the allegations contained in paragraph "112" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

113. Deny the allegations contained in paragraph "113" of the Complaint.

114. Deny the allegations contained in paragraph "114" of the Complaint.

**ANSWERING THE TWENTY-FIRST CLAIM FOR RELIEF**

115. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "114" of the Complaint.

116. Deny the allegations contained in paragraph "116" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

117. Deny the allegations contained in paragraph "117" of the Complaint and respectfully

refer the Court to the Agreement(s) for its terms, meaning and effect.

118. Deny the allegations contained in paragraph "118" of the Complaint.

119. Deny the allegations contained in paragraph "119" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

**ANSWERING THE TWENTY-SECOND CLAIM FOR RELIEF**

120. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "119" of the Complaint.

121. Deny the allegations contained in paragraph "121" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

122. Deny the allegations contained in paragraph "122" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

123. Deny the allegations contained in paragraph "123" of the Complaint.

124. Deny the allegations contained in paragraph "124" of the Complaint.

**ANSWERING THE TWENTY-THIRD CLAIM FOR RELIEF**

125. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "124" of the Complaint.

126. Deny the allegations contained in paragraph "126" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

127. Deny the allegations contained in paragraph "127" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

128. Deny the allegations contained in paragraph "128" of the Complaint.

129. Deny the allegations contained in paragraph "129" of the Complaint.

**ANSWERING THE TWENTY-FOURTH CLAIM FOR RELIEF**

130. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "129" of the Complaint.

131. Deny the allegations contained in paragraph "131" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

132. Deny the allegations contained in paragraph "132" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

133. Deny the allegations contained in paragraph "133" of the Complaint.

134. Deny the allegations contained in paragraph "134" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

**ANSWERING THE TWENTY-FIFTH CLAIM FOR RELIEF**

135. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "134" of the Complaint.

136. Deny the allegations contained in paragraph "136" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

137. Deny the allegations contained in paragraph "137" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

138. Deny the allegations contained in paragraph "138" of the Complaint.

139. Deny the allegations contained in paragraph "139" of the Complaint.

**ANSWERING THE TWENTY-SIXTH CLAIM FOR RELIEF**

140. Repeat the allegations, denials and admissions set forth in response to the allegations

contained in paragraphs "1" through "139" of the Complaint.

141. Deny the allegations contained in paragraph "141" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.
142. Deny the allegations contained in paragraph "142" of the Complaint.
143. Deny the allegations contained in paragraph "143" of the Complaint.
144. Deny the allegations contained in paragraph "144" of the Complaint.
145. Deny the allegations contained in paragraph "145" of the Complaint.
146. Deny the allegations contained in paragraph "146" of the Complaint.

**ANSWERING THE TWENTY-SEVENTH CLAIM FOR RELIEF**

147. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "146" of the Complaint.
148. Deny the allegations contained in paragraph "148" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.
149. Deny the allegations contained in paragraph "149" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.
150. Deny the allegations contained in paragraph "150" of the Complaint.

**ANSWERING THE TWENTY-EIGHTH CLAIM FOR RELIEF**

151. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "150" of the Complaint.
152. Deny the allegations contained in paragraph "152" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.
153. Deny the allegations contained in paragraph "153" of the Complaint and respectfully

refer the Court to the Agreement(s) for its terms, meaning and effect.

154. Deny the allegations contained in paragraph "154" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

155. Deny the allegations contained in paragraph "155" of the Complaint.

156. Deny the allegations contained in paragraph "156" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

157. Deny the allegations contained in paragraph "157" of the Complaint.

**ANSWERING THE TWENTY-NINTH CLAIM FOR RELIEF**

158. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "157" of the Complaint.

159. Deny the allegations contained in paragraph "159" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

160. Deny the allegations contained in paragraph "160" of the Complaint.

161. Deny the allegations contained in paragraph "161" of the Complaint.

**ANSWERING THE THIRTIETH CLAIM FOR RELIEF**

162. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "161" of the Complaint.

163. Deny the allegations contained in paragraph "163" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

164. Deny the allegations contained in paragraph "164" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

165. Deny the allegations contained in paragraph "165" of the Complaint and respectfully

refer the Court to the Agreement(s) for its terms, meaning and effect.

166. Deny the allegations contained in paragraph "166" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

167. Deny the allegations contained in paragraph "167" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

168. Deny the allegations contained in paragraph "168" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect, and respectfully requests that this Court deny the request of Plaintiffs contained therein in its entirety.

#### **ANSWERING THE THIRTIETH CLAIM FOR RELIEF**

169. Repeat the allegations, denials and admissions set forth in response to the allegations contained in paragraphs "1" through "168" of the Complaint.

170. Deny the allegations contained in paragraph "170" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect.

171. Deny the allegations contained in paragraph "171" of the Complaint and respectfully refer all questions of law to the Court.

172. Deny the allegations contained in paragraph "172" of the Complaint.

173. Deny the allegations contained in paragraph "173" of the Complaint.

174. Deny the allegations contained in paragraph "174" of the Complaint and respectfully refer the Court to the Agreement(s) for its terms, meaning and effect, and respectfully requests that this Court deny the request of Plaintiffs contained therein in its entirety.

#### **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

175. Plaintiffs have failed to state a cause of action upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

176. Plaintiffs' claims are barred by the doctrines of waiver, laches and estoppel.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

177. Plaintiffs have been paid, and have accepted, all monies for which Plaintiffs are entitled to be paid.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

178. That any injuries or damages sustained by Plaintiffs, as alleged in the Complaint, if any, were caused in whole or in part by the contributory negligence and/or culpable conduct of said Plaintiffs and not as a result of any contributory negligence and/or culpable conduct on the part of York Hunter.

**WHEREFORE**, Defendants York Hunter, Inc., York Hunter Management LLC, Kenneth Colao s/h/a Kenneth Calao d/b/a York Hunter Management LLC, and Kenneth Colao s/h/a Kenneth Calao (collectively "York Hunter") demands judgment as follows: (i) dismissing the Complaint as against York Hunter with prejudice; (ii) for the costs, disbursements and attorneys' fees incurred herein; and (iii) for such other and further relief as the Court may deem just, proper and equitable.

Dated: New York, New York  
December 28, 2007

BAUMAN KATZ & GRILL LLP  
Attorneys for Defendant  
YORK HUNTER, INC.

  
By: \_\_\_\_\_

Elvira Barisano (EB 6771)  
28 West 44<sup>th</sup> Street, Suite 600  
New York, New York 10036  
(212) 684-0300

TO: GORLICK, KRAVITZ & LISTHAUS, P.C.  
Attorneys for Plaintiffs  
17 State Street, 4<sup>th</sup> Floor  
New York, New York 10004  
(212) 269-2500

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MASON TENDERS DISTRICT COUNCIL WELFARE  
FUND, PENSION FUND, ANNUITY FUND, and  
TRAINING PROGRAM FUND, and JOHN J. VIRGA,  
in his fiduciary capacity as Director,

<sup>X</sup>  
07CV 6600 (WHP)

-against-

AFFIRMATION OF  
SERVICE

**YORK HUNTER, INC., YORK HUNTER  
MANAGEMENT LLC, KENNETH CALAO d/b/a  
YORK HUNTER MANAGEMENT LLC, and  
KENNETH CALAO,**

**Defendants.**

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<sup>X</sup>

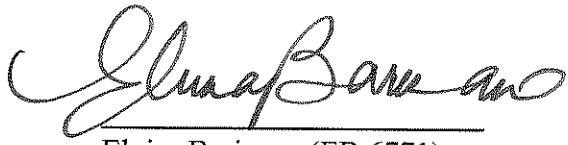
Elvira Barisano, an attorney admitted to practice law in the State of New York, affirms under penalty of perjury as follows:

1. I am not a party to this action. I am over 18 years of age and reside in New York County, New York.

2. That I served a copy of the within **Answer** upon the parties set forth at the addresses shown below by depositing a true copy with the United States Postal Service, at a depository located in the County of New York, addressed to:

GORLICK, KRAVITZ & LISTHAUS, P.C.  
Attorneys for Plaintiffs  
17 State Street, 4<sup>th</sup> Floor  
New York, New York 10004  
(212) 269-2500

Dated: New York, New York  
December 28, 2007



Elvira Barisano (EB 6771)

**MASON TENDERS DISTRICT COUNCIL WELFARE  
FUND, PENSION FUND, ANNUITY FUND, and  
TRAINING PROGRAM FUND, and JOHN J. VIRGA,  
in his fiduciary capacity as Director,**

**Plaintiffs,**

**-against-**

**YORK HUNTER, INC., YORK HUNTER  
MANAGEMENT LLC, KENNETH CALAO d/b/a  
YORK HUNTER MANAGEMENT LLC, and  
KENNETH CALAO,**

**Defendants.**

**X**

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**ANSWER AND DEMAND FOR JURY TRIAL**

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**BAUMAN KATZ & GRILL LLP**  
Attorneys for Defendant York Hunter, Inc.  
28 West 44<sup>th</sup> Street, Suite 900  
New York, New York 10036  
(212) 684-0300

**To**

**Attorney(s) for**

**Service of a copy of the within**

**is hereby admitted**

**Dated,**

**Attorney(s) for**

---

**NOTICE OF ENTRY**

that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within named Court on 20

**NOTICE OF SETTLEMENT**

that an order  
of which the within is a true copy will be presented for settlement to the HON.  
one of the judges of the within named Court, at  
on the day of 20 at M.

Dated,

Yours, etc.,

**BAUMAN KATZ & GRILL LLP**  
Attorneys for Defendant York Hunter, Inc.  
28 West 44<sup>th</sup> Street, Suite 900  
New York, New York 10036